

JAMES H. SCOTT

IBLA 76-363

Decided July 6, 1976

Appeal from notices of the Eastern States Office, Bureau of Land Management, rejecting 84 simultaneous oil and gas drawing entry cards and retaining the filing fees, ES 15599.

Reversed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:  
Applications: Filings--Regulations: Generally

Simultaneous oil and gas entry cards which are sent to the wrong State Office are not considered filed in the "proper office" within the meaning of 43 CFR 1821.2-2(f), and such State Office has no jurisdiction over entry cards pursuant to 43 CFR 1821.2-1(c); therefore, the filing fees for such offers should not be retained.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:  
Applications: Filings

Where a simultaneous oil and gas entry card is filed in the wrong State Office, the entry card and the filing fee should be returned to the offeror.

APPEARANCES: James H. Scott, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James H. Scott has appealed from notices of the Eastern States Office (ESO), Bureau of Land Management, returning 84 simultaneous oil and gas drawing entry cards (DECs) because

they had been filed in the wrong State Office, but which indicated also that the ESO was retaining the \$ 840 in filing fees which accompanied the DEC's.

In November 1975 appellant and eight others prepared 84 DEC's for filing in the New Mexico simultaneous drawing for that month. <sup>1/</sup> Each card showed that the parcel sought for leasing was located in New Mexico and that it was for a parcel in the 300-series. A cover letter from appellant was prepared to accompany all 84 cards in a single envelope. The cover letter was dated November 20, 1975, and addressed to the BLM State Office in Santa Fe, New Mexico. However, the envelope in which the letter and cards were transmitted, included in the case file, shows a postmark: "November 21, 1975, P.M., Atlanta, Texas," and this address:

U.S. Dept. of the Interior  
Bureau of Land Management  
7981 Eastern Avenue  
Silver Spring, Maryland 20910

The return address on the envelope is that of appellant: J. H. Scott, 7003 Shook Ave., Dallas, Texas 75214.

ESO received the envelope within the November 1975 simultaneous filing period. ESO was aware that the 84 filings were intended for the New Mexico State Office drawing from the covering letter addressed to the BLM State Office in Santa Fe, New Mexico, and from the observation that each card indicated it was for a parcel in the State of New Mexico, an area not within the jurisdiction of ESO. However, acting on its interpretation of Instruction Memorandum 75-194, *infra*, ESO retained the filing fees for the 84 DEC's, but returned the cards to the offerors, using BLM Form 3112-2, Return of Drawing Card Notice. Each notice showed that the filing fee was being retained and each indicated these reasons for the action taken: "Incorrect State"; "Incorrect Parcel Number"; "Filed in Wrong State."

Appellant contends that the \$840 in filing fees should be returned to him. He argues that he cannot account for the reason why the cards were delivered to the ESO, but he is sure that he "did not contribute to the error." He asserts that if the

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<sup>1/</sup> The 84 DEC's were submitted as follows:

James H. Scott - 12; Kathleen B. Scott - 12; James H. Scott, Jr. - 12; Marialice S. Scott - 12; Mary Sue McNab - 12; C. Bruce McNab - 12; Lillian S. Dunn - 4; Mary H. Shelby - 4; Walter R. Shelby - 4.

The address shown on each card was 7003 Shook Ave., Dallas, Texas 75214.

envelope which transmitted the filings was retained, "it will show clearly that it was addressed to the Bureau of Land Management in Santa Fe Office." He also states that his DEC's for inclusion in the November drawing at ESO had been transmitted to that office on November 18.

As stated above, the envelope which transmitted the 84 DEC's was not addressed to BLM Santa Fe, but rather to BLM in Silver Spring. Therefore, while appellant may suspect the Post Office of some wrong-doing in misdelivering the envelope, the evidence clearly shows that the envelope was properly delivered to ESO, exactly as it had been addressed. The responsibility for the misdirection of the envelope must be borne by appellant, because either he or someone acting in his behalf addressed the envelope to BLM, Silver Spring, Maryland.

The question to be decided is whether the filing fees for the misdirected DEC's should be retained.

The regulation governing simultaneous entry cards, 43 CFR 3112.2-1(a), reads in pertinent part:

Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. \* \* \*

BLM Form 3112-1 (May 1974) was designated by notice published in the Federal Register, 39 F.R. 24523 (1974), as the correct form of lease offer for simultaneous filing. Such notice contained the statement:

Failure to complete any part of the card will disqualify the application for participation in the drawing and will result in the retention of the \$ 10 filing fee by the Federal Government as a service charge.

The entry cards submitted by appellant were fully executed in compliance with 43 CFR 3112.2-1(a). Therefore, the Federal Register notice concerning retention of filing fees for failure to complete any part of the entry card would not be applicable to the situation herein.

The ESO based its action in retaining the filing fees on two documents, Instruction Memorandum No. 75-194, dated April 25, 1974, signed by the Associate Director, BLM, and an ESO notice dated

September 6, 1974. The notice sets forth the defects which would require rejection of simultaneous oil and gas lease offers and retention of filing fees. The notice does not discuss disposition of entry cards filed in the wrong State Office.

The Instruction Memorandum lists certain procedural changes in the processing of simultaneous oil and gas lease offers. n2 The memorandum specifically states that an entry card will be rejected, subject to the right of appeal, for failure to file the entry in the proper office. This requirement appears to be on point, except it is limited to the entry of a successful drawee. In this case the entry cards submitted by appellant were not included in the ESO November 1975 drawing or in any other drawing.

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2/ The memorandum sets out the defects of an offer which require the rejection of the offer and the return of the entry card, together with the filing fee. Such defects are:

- "1. Unacceptable remittance: not signed, not dated, postdated, improper payee, no payee, no amount.
- 2. Insufficient filing fee: ten offers with single check for nine offers, return entire group.
- 3. Premature or late filing.
- 4. Parcel deleted from list by BLM."

The filing fee will be retained and an entry card excluded from the drawing and returned to the offeror if the offeror did not indicate the parcel number for which he was applying or indicate a parcel number not on the current SOG list.

As stated in the memorandum, all other entries are to be included in the drawing without pre-adjudication.

The memorandum also sets forth the defects which will cause the entry of a successful drawee to be rejected, subject to the right of appeal. The entry will be rejected if the drawee has:

- "1. Submitted entry on the wrong form or reproduced the form.
- 2. Made a duplicate filing on the same parcel.
- 3. Failed to complete the entry card by omitting:
  - (a) Signature
  - (b) Date
  - (c) Address
  - (d) Social security or taxpayer number (indicating that such number has been applied for is not sufficient)
  - (e) State
- 4. Failed to file entry in the proper office.
- 5. Failed to furnish evidence of qualifications, or has not indicated where such evidence was previously filed.
- 6. Submitted an uncollectible remittance for the filing fee. This is not a curable defect."

The DEC's submitted by appellant for himself and others could not be placed in the ESO November drawings because each card indicated a parcel number not on the ESO list of available lands. Rationalizing that the DEC had not been filed in the proper office, ESO retained the filing fees, an action it construed as a requirement of Instruction Memorandum 75-194. In this, ESO erred.

Regulation 43 CFR 1821.2-2(d) provides:

(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the proper office, either in the mail or by personal delivery when the office is not open to the public, shall be deemed to be filed as of the day and hour the office next opens to the public.

"This chapter" includes Part 1000 to Part 9230 in Title 43. The simultaneous offer regulations in Part 3210 are part of "this chapter." Therefore, the regulation concerning the filing of documents, 43 CFR 1821.2-2, is applicable to simultaneous offers.

Having determined that the filing of simultaneous offers falls within the purview of 43 CFR 1821.2-2, subsection (f) of such regulation becomes important to the resolution of this case. Subsection (f) reads:

(f) Except when (c) of this section is applicable, filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing.

Subsection (c) is not applicable to the present case.

[1] It is apparent from a reading of subsection (f) that the entry cards mailed by appellant to the ESO were never filed because the ESO was not the "proper office" within the meaning of the regulation. In addition, 43 CFR 1821.2-1(c) provides that "completed forms and other documents must be filed in the office having jurisdiction." (Emphasis supplied.) Since filing of the New Mexico entry cards could not be accomplished in the ESO because it was not the "proper office," and because it did not have jurisdiction over such cards, the ESO should not have retained the filing fees. The ESO should have first determined whether the entry cards were filed in the proper office.

[2] When ESO observed the DEC's were for New Mexico parcels and knowing that New Mexico cards could not properly be filed in ESO, reasonably, one of two things could have been done:

forward the cards and filing fees to BLM, Santa Fe, or return the cards and filing fees to the offerors. The Instruction Memorandum dictates the return of DEC's and filing fee for premature or late filing. It does not specifically require retention of the filing fee if that card has not been filed in the proper office, but only that a successful drawee will be rejected if he failed to file the DEC in the proper office. We cannot perceive any real difference in the work required by a State Office to ascertain that a DEC is a premature or late filing and return the card and filing fee as compared with the work required to ascertain that a DEC has been misdirected to the wrong office, and then return both card and filing fee to the offeror. We cannot accept that ESO considered each of the 84 cards to be the entry of a successful drawee, to be rejected at that time because of failure to file in the proper office. Retention of the filing fees for these 84 misdirected DEC's was based on an erroneous interpretation of the Instruction Memorandum.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the action of the Eastern States Office, Bureau of Land Management, to retain the filing fees is reversed, and that office is directed to return all the filing fees herein discussed.

Douglas E. Henriques

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Administrative Judge

We concur:

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Newton Frishberg  
Chief Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

